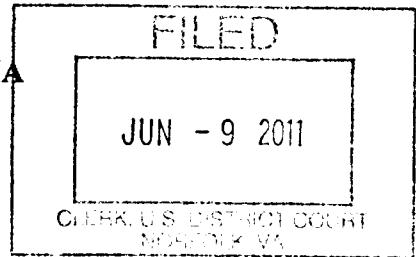


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



CAIN NICHOLAS JONES, #1114815,

Petitioner,

v.

ACTION NO. 2:10CV521

**HAROLD W. CLARKE,
Director of the Virginia Department of Corrections,**

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's convictions on November 16, 2009, of multiple counts of grand larceny, burglary, conspiracy and possession of burglary tools.

The matter was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge filed his Report and Recommendation on May 10, 2011, recommending dismissal of the petition without prejudice. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. The Court has received no objections to the Report and Recommendation and the time for filing objections has expired.

The Court does hereby adopt and approve the findings and recommendations set forth in the Report of the United States Magistrate Judge filed May 10, 2011. It is, therefore, ORDERED that

Respondent's Motion to Dismiss be GRANTED, and that the petition be DENIED and DISMISSED without prejudice. It is further ORDERED that judgment be entered in favor of the respondent.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to the petitioner and to counsel of record for the respondent.

/s/ MSD

MARK S. DAVIS
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
June 9, 2011